

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

KRYSTAL BELL, as personal representative
of JACOB ADAM MITSCHELEN, deceased,

Plaintiff,

v.

Cause No. 11-cv-0907 JCH/LAM

CITY OF ALBUQUERQUE,

Defendant.

**STIPULATED ORDER OF APPROVAL OF MINOR'S SETTLEMENT AND ORDER
OF DISMISSAL WITH PREJUDICE**

THIS MATTER having come before the Court upon Fairness Hearing on August 4, 2014 at 2:30 p.m., involving the minor, Keira Mitschelen, upon the stipulation of the parties, and the Court having reviewed the pleadings, and having heard presentation of counsel, testimony of Krystal Bell, Keira Mitschelen's parent and Guardian, and having determined that Plaintiff, Krystal Bell, as Parent and Legal Guardian of Keira Mitschelen, a minor, fully understands the terms of the settlement and proposed distribution of funds as it relates to the minor, Keira Mitschelen, and the Court having been sufficiently advised in the premises, FINDS:

1. The Court has jurisdiction over the parties and subject matter herein.
2. The settlement of the minor, Keira Mitschelen's claims against the Defendant as outlined in the *Guardian Ad Litem* Report, is fair, reasonable, and in the best interests of the minor, Keira Mitschelen, and the Motion should therefore be granted.

3. Krystal Bell, as Parent and Legal Guardian of Keira Mitschelen, is authorized and the appropriate person to enter into a compromise of Keira Mitschelen's causes of action against the Defendant.
4. Krystal Bell, as Parent and Next Friend of Keira Mitschelen has been apprised of her rights and is aware that neither she, nor Keira Mitschelen, nor their heirs and assigns shall be able to seek additional amounts from the Defendant and their insurers as set forth in the Settlement Agreement in the future regarding this claim and that this settlement constitutes a full and complete settlement of any and all claims Krystal Bell, individually, as Personal Representative of the Estate of Jacob Adam Mitschelen, deceased, and as Parent and Next Friend of Keira Mitschelen may have against the Defendant as a result of the incident as outlined in the *Guardian Ad Litem's* Report and as further and more particularly set forth in the Settlement and Release of All Claims.
5. Krystal Bell, as Parent and Next Friend of Keira Mitschelen has acknowledged that she understands and agrees that she will not assert that the released parties paid the settlement proceeds in an improper fashion or to a wrong party.
6. All sums set forth herein constitute damages on account of physical, personal injuries and sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.
7. A structured settlement annuity is in the minor, Keira Mitschelen's best interest and the structured settlement annuity approved herein is an integral and inseparable element of the proposed settlement, and is essential to this Court's determination of fairness. Krystal Bell, as Parent and Next Friend of Keira

Mitschelen acknowledge that the rights to receive the Periodic Payments described herein and granted to the minor, Keira Mitschelen cannot be accelerated, deferred, increased, decreased, sold, transferred, hypothecated, pledged, or otherwise alienated in any manner by Keira Mitschelen either directly or indirectly without the prior approval of the undersigned Judge or the then sitting Judge of the U.S. District Court for the State of New Mexico in which the above referenced lawsuit was filed, as evidenced by this Order. Any purported or attempted sale, transfer, hypothecation, pledge, or other alienation of such payment rights that has not been so approved will be a direct violation of the filed Order.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that:

1. The settlement in the amount of \$300,000.00, as outlined in the *Guardian Ad Litem's* Report against the Defendant is hereby approved as being fair, reasonable, and in the best interest of the minor, Keira Mitschelen.
2. The Court approves the Settlement Agreement and Release.
 - a. The total payment of \$300,000.00 shall be distributed in accordance with the *Guardian Ad Litem* Report, such that payment of attorney's fees, gross receipts tax, and costs, shall be issued to Paul Kennedy, Esq. in the amount of \$ 109,073.42, and payment of \$926.58 shall be issued to Paul Kennedy, Esq. and Krystal Bell in the amount of \$926.58, for the sole benefit of Keira Mitschelen.
3. The remaining \$190,000.00 shall be used to purchase a structured settlement

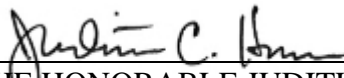
annuity for Keira Mitschelen's benefit which shall pay certain future periodic payments as described below:

	<u><i>Cost</i></u>	<u><i>Expected Benefits</i></u>	<u><i>Guaranteed Benefits</i></u>	<u><i>IRR</i></u>
<u>Period Certain Annuity</u>				
\$15,000.00 payable annually, guaranteed for 4 year(s), beginning on 05/01/2026 at age 18		\$60,000.00	\$60,000.00	3.43%
<u>Period Certain Annuity</u>				
\$15,000.00 payable annually, guaranteed for 4 year(s), beginning on 12/01/2026 at age 18		\$60,000.00	\$60,000.00	3.48%
<u>Period Certain Annuity</u>				
\$1,000.00 payable monthly, guaranteed for 4 year(s), beginning on 05/01/2026 at age 18		\$48,000.00	\$48,000.00	3.47%
<u>Life with Certain Period Annuity</u>				
\$709.49 for life, payable monthly, guaranteed for 20 year(s), beginning on 12/05/2042 at age 35, with the last guaranteed payment on 11/05/2062 at age 54.		\$170,277.60	\$468,263.40	4.44%
<u>Guaranteed Lump Sum:</u>				
\$10,000.00 paid on 12/05/2025.		\$10,000.00	\$10,000.00	3.29%
<u>Guaranteed Lump Sum:</u>				
\$50,000.00 paid on 12/05/2032.		<u>\$50,000.00</u>	<u>\$50,000.00</u>	3.74%
Assignment Fee:	\$750.00			
TOTAL	\$190,000.00	\$398,277.60	\$696,263.40	

The cost of this proposal is \$190,000.00. The Guaranteed payout is \$398,277.60. The Expected Benefits is \$696,263.40. The obligation for these payments may be assigned to Prudential Assigned Settlement Services Corp. (PASSCorp.) with Prudential Insurance Company of America, the Annuity Issuer, rated A.M. Best: A+ ; Standard & Poor's:

AA-; Moody's A1; Fitch: A+. The Taxable Equivalent Yield at a 28% tax bracket is 5.62%.

4. Krystal Bell understands and agrees that this is Keira Mitschelen's money and Krystal Bell is under a fiduciary duty to safeguard and protect this money for Keira Mitschelen's benefit and should Krystal Bell disburse any funds contrary to this Court's Order Krystal Bell may be the subject of contempt of court proceedings.
5. All claims belonging to Krystal Bell, individually, as Personal Representative of the Estate of Jacob Adam Mitschelen, deceased, and as Parent and Legal Guardian of Keira Mitschelen, and all of Keira Mitschelen's claims arising from the incident as described in the *Guardian Ad Litem* Report which were or which could have been brought by Krystal Bell, individually, as Personal Representative of the Estate of Jacob Adam Mitschelen, deceased, and/or on behalf of the minor, Keira Mitschelen, and Keira Mitschelen against the Defendant, are dismissed with prejudice.
6. The *Guardian Ad Litem* for Keira Mitschelen is hereby discharged of her duties. Her fees shall be paid the Defendant.



THE HONORABLE JUDITH C. HERRERA
UNITED STATES DISTRICT JUDGE

APPROVED:

Approved via email August 13, 2014

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Electronically signed /s/ Gabrielle M. Valdez

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Guardian Ad Litem for Keira Mitschelen